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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation[1]

Preliminary report submitted by Mr. El Hadji Guissé in pursuance of decision 2002/105 of the Commission on Human Rights and resolution 2001/2 of the Sub-Commission on the Promotion and Protection of Human Rights

[1] In accordance with General Assembly resolution 53/208, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

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Introduction

1. In resolution 1998/7 dated 20 August 1998 the Sub-Commission on Prevention of Discrimination and Protection of Minorities, having taken note with appreciation of the working paper on the right of access of everyone to drinking water supply and sanitation services (E/CN.4/Sub.2/1998/7), decided to appoint Mr. El Hadji Guissé as Special Rapporteur on the topic. The Commission on Human Rights postponed that appointment by its decision 1999/108, having noted that the issue of the right of individuals to drinking water supply and sanitation services remained undefined, and requested the Sub-Commission to give further consideration to this aspect in preparation for a study on the subject.

2. In its decision 2002/105 of 22 April 2002, the Commission on Human Rights, taking note of resolution 2001/2 of 10 August 2001 of the Sub-Commission on the Promotion and Protection of Human Rights, decided to approve the decision to appoint Mr. El Hadji Guissé as Special Rapporteur to conduct a detailed study on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation, at the national and international levels, taking also into account questions related to the realization of the right to development, in order to determine the most effective means of reinforcing activities in this field and defining as accurately and fully as possible the content of the right to drinking water in relation to other human rights. The Commission also requested the Special Rapporteur to submit to the Sub-Commission a preliminary report at its fifty-fourth session, a progress report at its fifty-fifth session and a final report at its fifty-sixth session.

I. GENERAL CONSIDERATIONS

3. Water is essential to life. This succinct statement has a content and a meaning that are widely ignored but represent a harsh reality in many parts of the world. Fresh water and access to drinking water have always been a crucial factor in the viability and success of civilizations. The extent to which the availability of this vital element contributes to both social well-being and economic productivity is still too often ignored, although many economic and social activities depend on a supply of good-quality drinking water. Since drinking water is a vital resource for humanity, it is one of the basic human rights and closely linked to the other rights of the individual. Giving water to a seed causes it to germinate and life to begin. Conversely, desiccation leads to death. The loss of water may have serious consequences for humans if it amounts to 10 per cent of body mass and may cause death if it reaches 20 per cent or more. Moreover, the experts assure us that water, which always contains various mineral and organic substances, constitutes 58-67 per cent of body weight among healthy adult males and 66-74 per cent among newborns. When over a billion people are short of this source of life, our species has reason to be alarmed.

4. Some 1.5 billion people today have no access to safe drinking water and almost 4 billion are without adequate sanitation services. The World Health Organization (WHO) estimates that 80 per cent of illnesses are transmitted by contaminated water. This results from the fact that only a small number of people, particularly in developing countries, have access to acceptable water. It is estimated that in some countries only 20 per cent of the rural population have access to water of satisfactory quality. The world's fresh water resources represent only 3 per cent of

the total volume of water, yet all human activities depend on them. Fresh water is crucial to meeting household needs, which nonetheless use only 6 per cent of available resources. It also plays a pivotal role in sanitation, agriculture, industry, urban development, energy production, fisheries, transport, leisure activities and many other human endeavours. It is therefore necessary to recognize the multisectoral dimension of the development of water resources in the context of socio-economic development.

5. Drinking-water access and quality continue to be a fundamental problem, since some 3 billion people will suffer water shortages by the year 2025. Universal disparities in access to drinking water and sanitation are revealing, especially with reference to the data contained in the Human Development Report of the United Nations Development Programme (UNDP). Unequal distribution, both geographical and socio-economic, is responsible for bad management of drinking water. However, according to an International Law Commission report, groundwaters are found virtually in every continent and have the potential to meet the minimum drinking water and sanitation needs of the entire world population. Moreover, groundwater is the largest source of fresh water available in storage on earth. According to the Organization for Economic Cooperation and Development, groundwater provides 75 per cent of all drinking water supplies. It is often the only source of water but it is expensive to recover and is almost exclusively available to those who have the resources, namely the industrialized countries.

6. The Declaration on Social Progress and Development proclaimed by the United Nations General Assembly on 11 December 1969 has the objectives of "equitable sharing of scientific and technological advances by developed and developing countries, and a steady increase in the use of science and technology for the benefit of the social development of society" (art. 13 (a)). Moreover, the Charter of Economic Rights and Duties of States proclaimed on 12 December 1974 recognizes that "every State has the primary responsibility to promote the economic, social and cultural development of its people … and to choose its means and goals of development, fully to mobilize and use its resources, to implement progressive economic and social reforms and to ensure the full participation of its people in the process and benefits of development". Many regions of the world today suffer from serious water shortages. At the same time, this resource is undergoing increasing degradation and contamination. In this connection, reference may be made to article 24 of the African Charter on Human and Peoples' Rights, which states that "all peoples shall have the right to a general satisfactory environment favourable to their development".

7. Access to drinking water and sanitation is a matter for the entire world population. Water as a vital resource concerns every human being. Moreover, according to the Declaration on the Right to Development, adopted by the United Nations General Assembly on 4 December 1986, the human person is the central subject of development and should be the active participant and beneficiary of the right to development (art. 2, para. 1). In this connection, and in order to meet the basic needs of all, the Programme of Action of the World Summit for Social Development, held in Copenhagen in March 1995, stresses the need to create "public awareness that the satisfaction of basic human needs is an essential element of poverty reduction; these needs are closely interrelated and comprise nutrition, health, water and sanitation, education, employment, housing and participation in cultural and social life" (chap. II, para. 35). This creation of public awareness also involves implementing sustainable development programmes which are aimed, on the one hand, at integrating the requirements of the conservation and protection of the natural

environment and, on the other, at strengthening the capability of civil society and local communities to participate actively in the preparation and implementation of social programmes, by education and access to resources. It is necessary to strengthen the capacities and opportunities of all people, especially those who are disadvantaged or vulnerable, to enhance their own economic and social development, to establish and maintain organizations representing their interests and to be involved in the planning and implementation of government policies and programmes by which they will be directly affected.

8. The largest consumer of water is agriculture, on which food production depends. In 1993, the world population numbered 5.5 billion and by the year 2025 it is expected to reach 8.5 billion people, 83 per cent of whom will live in developing countries. One of the greatest challenges of the coming decades will be to increase food production on a sustainable basis. Fresh water needs will thus become more pressing in order to irrigate and water new lands and improve soil yield. It should be stressed that the elimination of hunger and malnutrition and the guarantee of the right to proper nutrition for all is one of the objectives of the Declaration on Social Progress and Development. It should also be noted, as stated in the Universal Declaration on the Eradication of Hunger and Malnutrition adopted on 16 November 1974 by the World Food Conference, that "marine and inland water resources are today becoming more important than ever as a source of food and economic prosperity. Accordingly, action should be taken to promote a rational exploitation of these resources" (para. 5). The International Covenant on Economic, Social and Cultural Rights recognizes "the fundamental right of everyone to be free from hunger" (art. 11, para. 2). It advocates some steps to be taken by States, including specific programmes, to ensure the realization of that right. These include the necessary measures "to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge" (art. 11, para. 2 (a)).

9. The Convention on the Law of the Non-navigational Uses of International Watercourses stipulates that special regard should be given to the requirements of vital human needs (art. 10, para. 2), whereby special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation. It must be stressed that since the proclamation of the International Drinking Water Supply and Sanitation Decade (1981-1990) several regional or international meetings dealing with water management have been held to define action programmes aimed at guaranteeing the world's population an adequate supply of water and sanitation.

10. In May 1985 the environment ministers of the European Union launched a water solidarity programme. In June 1990 the participants in the Montreal Forum drafted the Montreal Charter on Drinking Water and Sanitation. In September 1990 the Executive Committee of the International Drinking Water Supply and Sanitation Decade and the United Nations Development Programme organized the Global Consultation on Safe Water and Sanitation in New Delhi. In 1994 a Ministerial Conference on Drinking Water and Environmental Sanitation was held in Noordwijk. In March 1997 the first World Water Forum drafted the Marrakech Declaration, and in March 1998 the International Conference on Water and Sustainable Development held in Paris gave a reminder that over 1 billion human beings still had no

access to safe drinking water. These meetings demonstrate that the water problem is genuinely alarming and that it is absolutely essential to seek appropriate solutions through concerted and solidarity-based action. The drinking water shortage is the most serious threat that the human species has ever encountered.

11. While water is certainly an economic asset, it is also an ecological asset linked both to community or solidarity-based rights and to individual human rights. Above all, the right to water, together with the right to food, is the very essence of the right to life. Before dealing with the problem of the legal basis of the right to drinking water or the right of access to drinking water, the author believes it is necessary to consider the causes of the water shortage in the world and the management methods needed to conserve water. It must also be pointed out that this common asset is managed differently in industrialized and developing countries and depending on whether or not water management is privatized.

II. CAUSES OF THE DRINKING WATER SHORTAGE

12. The shortage of the drinking water we need for our existence is due to a number of factors varying in their origin and extent. The main causes of the shortage of both domestic and industrial water include the destruction of catchment areas, deforestation, harmful agricultural practices based on the heavy use of pesticides and other chemicals, and the dumping of toxic wastes. In this regard the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement of Hazardous Wastes within Africa highlights the damage such wastes may cause to health and environment. The dumping of hazardous wastes at sea and in waterways damages water ecosystems and gravely endangers freshwater biological resources.

13. These factors differ from country to country but are major sources of concern today for the entire world population and for all countries, particularly poor developing countries. As noted above, drinking water is physiologically essential for the human species. It is also essential for all activities associated with economic production, health, research, etc. There is therefore a close relationship between human water needs and industry, agriculture, development, environment and peace. The following list of causes of the drinking water shortage in the world is not exhaustive; those analysed in this report are simply the most familiar causes.

A. Natural causes

14. Drinking water is unevenly distributed throughout the world. Canada, for example, has hundreds of lakes providing its population with a vast quantity of fresh water, whereas Saharan Africa is an arid desert where life is threatened by the lack of water. This imbalance is particularly alarming because it is continually worsening, as shown by the drying-up of watercourses and lakes in countries where the desert is advancing and daily claiming large areas of hitherto cultivable land. Advancing desertification is now a major concern for large populations in sub-Saharan Africa and is threatening animal and plant life in that part of the world. This situation is likely to continue on account of the state of underdevelopment in which these populations live. The only sources of fresh water are at depths that can only be reached by techniques which only the industrialized nations can afford.

15. This was stressed by the Madeira Declaration on the Sustainable Management of Water, adopted by the European Council on Environmental Law on 17 April 1999, which aims at the use of water "in a reasonable and equitable way, in a spirit of solidarity and in a manner consistent with the principle of sustainable development" (art. 1). The Council draws particular attention to all forms of non-sustainable development of water resources. In article 2 of the Declaration, it warns the authorities about the excessive quantities of water that are not wisely used, non-point pollution and eutrophication, deterioration of biodiversity, and depletion of the resource (reduction in the level and quality of groundwater, drying-up of surface water and wetlands). It is essential to conserve water ecosystems, wetlands and watercourses for what they are, not simply because of any economic value they may have. The survival of our species is at stake.

16. The environment must therefore be protected and in some cases the quality of water will need to be restored. Particular attention will need to be paid to applying the precautionary principle in order to prevent, as far as possible, the dumping of toxic substances into watercourses and the deterioration of biodiversity. It is essential to ensure the availability of water in sufficient quantity and of adequate quality to meet basic human needs, in order both to improve the health of the world population and to ensure sustainable development.

B. Causes linked to human activities

17. The largest consumer of water is agro-industry, on which depends the food production needed to feed the world population, which by the year 2025 is expected to reach 8.5 billion persons, 83 per cent of whom will live in developing countries. One of the greatest challenges of the coming decades will therefore be to increase food production on a sustainable basis. Freshwater needs will thus become more pressing in order to irrigate and water new lands and improve soil yield. Eliminating hunger and malnutrition and guaranteeing that populations have adequate nutrition is one of the main objectives of the efforts at social progress and development. If present trends continue, there is no denying that the water shortages we are already experiencing will worsen. In some arid countries water is so scarce that the drying-up of the resource constitutes the most serious threat for the people who live there. It should be borne in mind that 1 kilogram of grain requires at least 1,000 litres of water. In view of the problem of hunger in the world, it seems unavoidable that the area of land under irrigation will have to be increased, and this will require the consumption of vast quantities of water.

18. Industry, the other source of improvement of our modern life, also needs large amounts of water at every stage. This sector uses nearly 20 per cent of available resources. By way of example, the manufacture of a ton of steel requires on average 200 m^3 of water; a ton of paper from 50 to 300 m^3; and a car almost 30,000 m^3. A small number of industries account for more than half of all the water assigned to industrial use. This is further evidence of the needs of industrialized countries for water of varying quality. In many cases, relatively untreated water will suffice but drinking water is also used, as for example by the food industry which requires good-quality drinking water. The use of water by industry not only reduces substantially the reserves available to us but also pollutes and impairs the quality of the water, which then needs to be recycled before it can be used again, a task that requires processes and technologies that are not available to all countries.

III. LEGAL BASIS OF THE RIGHT TO DRINKING WATER

19. The right to drinking water is the right of every individual to have access to the amount of water required to meet his or her basic needs. This right covers access by households to drinking water supplies and waste-water treatment services managed by public or private bodies. Some people hold that this right does not cover water intended for commercial, industrial or agricultural activities. They believe that the right to water means providing everyone with the minimum amount of good-quality water that is adequate for life and health, that is, to enable people to meet their essential needs such as drinking, food preparation and hygiene, and to permit small-scale family food production. This restrictive view of the right to drinking water is not shared by the non-governmental human rights organizations, which link this right to all the other human rights, particularly economic, social and cultural rights, which cover everything that contributes to implementation of the right to life. Apart from air, water is the only natural resource that the human species cannot do without; it is therefore essential to human survival. According to the European Council on Environmental Law, water is above all a social good, that is, a resource that forms part of the common heritage of humanity. Water should therefore be the subject of regulation and supervision by the public authorities. Water is also an economic good of great value, which cannot be treated as a mere commodity like other consumer goods. The Council stresses that access to drinking water must not be subject to market forces dominated by the profit motive.

A. International law concerning the right to drinking water

20. The right to drinking water is specifically mentioned in two conventions in force, namely the Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979 and ratified by 164 countries, and the Convention on the Rights of the Child, adopted on 20 November 1989 and ratified by 190 countries. In September 1990, at the World Summit for Children in New York, the heads of State and Government adopted the World Declaration on the Survival, Protection and Development of Children in which they made a commitment to promote the provision of clean water for all children. According to the Action Plan adopted at the United Nations Water Conference held in Mar del Plata in 1977, all peoples have the right to have access to drinking water in quantities and of a quality equal to their basic needs. This document inspired paragraph 18.47 of Agenda 21, which cites the commonly agreed premise that "all peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs".

21. The Protocol on Water and Health to the Convention on the Protection and Use of Trans-boundary Water Courses and International Lakes, signed in London on 17 June 1999 under the auspices of the United Nations Economic Commission for Europe, and the WHO regional office for Europe, is undoubtedly the first international instrument of positive law that takes a position in favour of access to clean water for all. Article 5 of the Protocol stipulates that "parties shall be guided in particular by the following principles and approaches: [...] equitable access to water, adequate in terms both of quantity and of quality, should be provided for all members of the population, especially those who suffer a disadvantage or social exclusion". Article 4 (2) states that the "Parties shall, in particular, take all appropriate measures for the purpose of ensuring: (a) adequate supplies of wholesome drinking water [...]; (b) adequate

sanitation [...]". Article 6 (1) states that "the Parties shall pursue the aims of: (a) access to drinking water for everyone; (b) provision of sanitation for everyone". The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador), which was signed on 17 November 1988 and entered into force on 16 November 1999, states in article 11 (1): "Everyone shall have the right to live in a healthy environment and to have access to basic public services."

22. The right to drinking water is not explicitly mentioned in the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950. Following the Ministerial Conference held during the Second World Water Forum in The Hague in March 2000, it was stressed that access to water has been recognized as one of the basic rights of the human individual by many countries, including those of the European Union. Many countries now recognize that every human being has the right of access to drinking water. Ireland, it appears, recognizes the right of every human being to drinking water by providing free drinking water for all. This attitude is in line with one of the present author's proposals, namely to eliminate the word "access" from the individual's right to water. Nowadays we have two formulas:

- the right of access to drinking water, which is almost universally applied;

- the right to drinking water, the consequence of which is free water.

It must be borne in mind that in implementing the right to sanitation and the right to clean water the European Court of Human Rights already has a substantial body of precedents on this issue, in which these rights are analysed in relation to other economic, social and cultural rights of the individual. Examples are the case of Zander v. Sweden (1993) concerning the probable pollution of a drinking water well from a nearby dump and the case of López Ostra v. Spain in which the court recognized that "severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely".

23. In many cases poor people are not aware of their rights. They are often unable to understand the letters and notifications they receive from Government offices and water distribution companies or the administrative steps and procedures they are requested to follow. To enable the poor to defend their rights effectively, it is necessary to set up social structures in their vicinity to keep them better informed of the content of their rights and to assist them with the necessary steps and procedures. The assistance provided for this category of people could also cover disputes with the distribution company or the owner in cases where the water bill is out of proportion with actual consumption. In many industrialized countries the right of access to water is considered in the same way as the right to food or accommodation, that is, as a right with little formal status or as a very relative obligation on the part of the public authorities, depending to a large extent on the financial resources of the body that owes the obligation. Here we encounter a familiar problem with the implementation of economic, social and cultural rights, which is that these are rights whose implementation depends on the economic and financial resources of the State concerned.

24. The access of everyone to safe drinking water must be an imprescriptible right. It must not be subject to any restriction, in any place or at any time. The Global Water Contract (1998) lays stress on the individual right to water and on participation by the citizen. It calls for the free supply of the water needed to satisfy essential needs. The French Académie de l'Eau believes that while everyone should bear the cost of drinking water, solidarity between rich and poor should ensure supplies for the most indigent. The European regional delegations of Secours catholique (French Catholic relief), which regularly encounter cases of unpaid water bills, are alarmed at the increasing difficulties encountered by the poor in paying their bills. These people only avoid having their water supply cut off because the regional delegations intervene financially, often at the request of social workers.

25. The International Conference on Water and the Environment held in Dublin in 1992 declared that it was vital to recognize the basic right of all human beings to have access to clean water and sanitation at an affordable price. The terms of the Dublin Statement are not particularly precise and certainly lend themselves to interpretation. There are indeed many shades of meaning between such concepts as drinking water and clean water or between adequate sanitation and safe water. In some international instruments that propose free supplies for some, only the poor would benefit from this measure, with limitations on the amount used. In the long term this discriminatory practice could harm the implementation of the right of access to drinking water. This is a very curious way of confining the poor within their poverty, which is where the concept of extreme poverty leads us. The same would appear to apply to what are known as proportional scales of charges. The European Council on Environmental Law urges all sectors of the economy to respect the right to water, in other words all the legal provisions concerning access to drinking water. This is aimed in particular at those who are liable to impair the resource through depletion, diversion, irrigation or pollution.

B. Regional and national legal standards governing the right to drinking water and sanitation

26. At regional level, there has been a tendency to establish and develop regional standards governing the right of access to drinking water. Such regional rules are not basically different from those devised by the United Nations system; rather they are complementary and tend to further specify and confirm the individual's right to drinking water. The European Council on Environmental Law has stated that water is essentially a social good, that is, part of the heritage of humankind. Water should therefore be subject to regulation and supervision by the public authorities, in order to ensure that it is equitably used and shared between all users in a spirit of solidarity. The right to drinking water has also been enshrined in several intergovernmental declarations as being a human right to water, recognized by several European countries. Unfortunately, this community law is neither positive nor binding, although it should be considered as real legislation which is judicially enforceable, and not merely as an aspiration or a political objective.

27. The human rights to sanitation and to drinking water are specifically recognized in international law and in regional law, as in the African Charter on Human and Peoples' Rights, the Declaration of the 1972 United Nations Conference on the Human Environment and the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed in Aarhus on 25 June 1998. This recognition in the

form of a non-binding principle should gradually evolve towards enforceability in the courts, ensuring that the right is enjoyed in practice. The Ministerial Declaration of The Hague on Water Security in the 21st Century aims to guarantee that every person has access to enough safe water at an affordable cost to lead a healthy and productive life. The Declaration recognizes that access to water and sanitation are basic human needs and are essential to health and well-being.

28. National legal systems are developing legislation that increasingly recognizes and protects people's right to drinking water and sanitation, even though almost invariably the beneficiaries of the right have to pay the price dictated by water and sanitation services. The prices vary from one continent and one country to another, ranging from completely free to extremely expensive services, amounting at times to discriminatory practice. According to paragraph 11 of the Preamble to the French Constitution of 1946, "[the nation] guarantees to all [...] health protection, material security". In terms of drinking water, this means that the State must promote the development of water production and distribution equipment in such a way as to ensure that all citizens, including the poorest, enjoy effective access. Even if the State opts to finance these investments and the related operating costs by charging the full price for water, it must at the same time provide for special arrangements, exceptions and amendments that ensure that the poorest citizens have access to drinking water and sanitation. This obligation is all the more justified in that the French Water Act of 3 January 1992 stipulates that the use of water belongs to everyone. In May 1990, the French Senate adopted an amendment to the draft law on the reform of civil enforcement procedures (law adopted on 9 July 1991), according to which "gas, electricity and water supplies may be cut off on the grounds of non-payment, in the case of dwellings, only in the event that the creditor obtained an execution warrant beforehand which remained without effect". In a judgement delivered on 11 March 1996, the Regional Court of Roanne (France) convicted a distribution company of unlawful interruption of the water supply, on the grounds that a supplier who has not been paid must apply to the court for an enforcement warrant to ensure payment of the sums owed. Failing express authorization to do so, the supplier may not cut off the water supply, since the latter is a service on which the normal living conditions of families depend. This court ruling, though unusual, nevertheless comes closer to making the right to drinking water a legally protected reality.

29. The rational use of water resources, their protection and the need to prevent water damage are explicitly referred to in article 76 of the 1999 Federal Constitution of the Swiss Confederation. The Constitutions of the American States of Illinois, Pennsylvania, Massachusetts and Texas all recognize the right of people to pure water. The Constitutions of Belgium, Hungary, Korea, Netherlands, Poland, Portugal, Spain, Turkey, Brazil and Chile, as well as those of Colombia, Ecuador, Nicaragua, Indonesia, Peru, Viet Nam and South Africa, all recognize the right of people to a healthy environment. The French Government made its position on water clear at the International Conference on Water and Sustainable Development, held in Paris in March 1998, when the French Prime Minister said: "You have discarded the ancient and outdated belief that water is a gift of heaven and must therefore be free. The economic approach should not, however, be confused with a commercial one. Water is not a commodity like any other. It cannot be governed by the pure market interplay rule of supply and demand. A balance has to be found between the ability to pay of each category of users, the

economic and social cost of their participation in collective action and the political choices every State has to make with regard to what it considers as its priority interests." At the Second World Water Forum, France maintained that water cannot be managed in the same way as a commercial good, because it is a public, collective and patrimonial good.

30. The constitutions of African States that refer to international instruments tend to follow a similar line of argument. Since they depend on market conditions as a result of the privatization of water supplies, however, these countries, are hardly in a position to guarantee the individual's right to drinking water. The major French transnational water companies succeed in obtaining agreements for the privatization of water. They pay insignificant royalties to the State and sell the water required for people's basic needs at an exorbitant price. The effect of untimely privatizations of water supplies in Africa in the last decade has been chiefly to create further water shortages. Water has become too expensive and the system of management by exclusion has given rise to extreme and now endemic poverty in Africa. The right to water for African populations will inevitably depend on our water supplies, as a common good, being deprivatized and subjected to sound public management. The people should have a say in managing drinking water and should have the opportunity to oppose the privatization of water supplies for purposes of profit only. Of course the treatment and distribution of water incur a cost which cannot be disregarded, but the supply of water should nevertheless be sold for a reasonable price which is bearable by every human being, regardless of his or her means.

31. In some countries, the right to water is enshrined in national law. According to article 3 of the decree of 20 December 1996 of the Flemish community of Belgium, every subscriber is entitled to a minimum, uninterrupted supply of electricity, gas and water for household use in order to live according to the prevailing standard. Since January 1997, every inhabitant has been receiving a free supply of 15 m^3 of water per year. Every individual is entitled to the quality and quantity of drinking water required for food and for household and health needs. According to article 43-5 of the French law of 29 July 1992 concerning action against poverty and against social and occupational exclusion, optional administrative services can be charged for in proportion to the income of users and the number of persons living in the household. Access to water for all as a right is feasible. No valid reason, whether technological, economic, financial or political, can justify the failure to implement that right.

IV. THE RIGHT TO DRINKING WATER AND SANITATION IS A HUMAN RIGHT

32. The right to drinking water and sanitation is an integral part of officially recognized human rights and may be considered as a basic requirement for the implementation of several other human rights. The European Council on Environmental Law has considered the issue of whether the right to water should be deemed a human right. It found that the "right of everyone to an adequate standard of living" stated in article 11 of the International Covenant on Economic, Social and Cultural Rights implies that every person should have enough water to survive. Furthermore, the right to water is indissociable from the right to sufficient food. The 1992 International Conference on Water and the Environment adopted the Dublin Statement, according to which it is vital to recognize the basic right of all human beings to clean water and sanitation at an affordable price. All persons, regardless of their living conditions or means, are entitled to drink clean water. The Universal Declaration of Human Rights of 1948 already

implicitly recognized the right in saying that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services" (art. 25, para. 1).

A. Content of the right to drinking water and sanitation

33. The recognition of a right to water by States implies, on a domestic level, the existence of rights and obligations regarding the supply of drinking water and sanitation. The right to drinking water means that all persons, without discrimination, must have access for their basic needs to a sufficient quantity and quality of water supplied under the best possible conditions. This right, however, as States try to implement it nowadays, calls for a return payment, which immediately excludes a fair proportion of the population, especially the poorest sectors. States are generally obliged to take action to facilitate access to water and sanitation, and, as a matter of priority to implement the principle of some for all rather than more for some. They must also intervene in the event of a shortage or in the event that, for financial reasons, the water suppliers have cut off the supply of water to certain persons. If the management of drinking and sanitation is entrusted to a private company whose main objective is profit, the State has an obligation to ensure that the poor receive a minimum supply of drinking water and sanitation. States must, in all cases, monitor, and if necessary take action to check the financing of works, the quality and quantity of water, the way shortages are managed, pricing, specifications, the degree of sanitation and participation by users. In some cases special measures will have to be taken to avoid abuses arising from a dominant position and other excesses which may be committed by companies enjoying a monopoly.

34. States must also decide whether to subsidize water services or to take specific measures to guarantee access to drinking water for all, particularly the poorest sectors. Users' contributions should never reach or exceed the threshold of what is humanly possible, in order to avoid the poorest sectors from being excluded, and, where water supplies are not free of charge, progressive tariffs must be established in accordance with the economic and financial capacities of users, maintaining an appropriate relation between quality and price. The right to water must be respected by all institutions and by every individual. They have a duty to implement all legal provisions concerning access to water and sanitation. For that purpose, they must oppose any impairment of water resources, for instance by depletion, diversion, irrigation or pollution. Clearly users should be encouraged to contribute to the management of water and sanitation, which will certainly induce them to accept social pricing. According to an opinion issued by the European Council on Environmental Law, the cost of water should be shared among all so as to ensure that each individual can enjoy the right to water. The cost to taxpayers may be adjusted to ensure that every person has access to water in accordance with his or her financial means. In that way the cost of water will become affordable for all consumers.

B. Implementation of the right to drinking water and sanitation

35. States must take measures to promote and protect access to water and sanitation and must abstain from any measure that impedes such access. On a domestic level, the public authorities are generally subject to different obligations with regard to the implementation of the right to drinking water and sanitation. They have to comply with positive obligations (such as supplying drinking water or draining and treating waste water), with the obligation to ensure equal

treatment for different users (e.g. by ensuring access for all to a minimum quantity of water of sufficient quality); and with negative obligations (such as not cutting off water supplies). The essence of the right to water resides in the implementation of the principle that no person may be deprived of enough water to satisfy basic needs. In order to ensure access to drinking water for all, without discrimination, and to allow the individual right to water to be fully exercised, the public authorities have to take a number of measures, of which some should be targeted specifically at deprived persons. These measures should be aimed at improving the quality of water, at reducing losses and at establishing better pricing of household supplies. The public authorities must take legal measures as appropriate to benefit deprived persons.

C. The right to drinking water and other human rights

36. The right to drinking water is an internationally recognized human right and is a right which in practice is related to all other human rights. The following points will illustrate the links between that right and other human rights.

1. The implications of the right to drinking water and sanitation for community rights

(a) The right to peace

37. The lack of access to drinking water and sanitation is a source of tension. Many of the world's current conflicts are caused by the lack or insufficiency of water and other conflicts are about to break out. Need it be recalled that, by the year 2025, 3 billion men, women and children will be deprived of drinking water? Water is the very source of life and denying that right is equivalent to denying the right to life. The Declaration on the Right to Development, adopted on 4 December 1986, stipulates that States have a duty to "promote the establishment, maintenance and strengthening of international peace and security" (art. 7). The Declaration on the Right of Peoples to Peace, adopted on 12 November 1984, solemnly proclaims that "the peoples of our planet have a sacred right to peace" (para. 1). All approaches to peace should in any case take account of the need for drinking water, which though essential for life is already in short supply.

(b) The right to self-determination

38. If it is to fulfil its obligation to ensure the right to drinking water for its citizens, a State must be able, on behalf of its people, to exercise the right to self-determination, free of unjustified interference, over all the natural resources and wealth under its jurisdiction. Subject to that condition, the State should be able to provide its citizens with a sufficient supply of good-quality water under the best operating conditions, free of market constraints.

(c) The right to development

39. Unequal distribution of access to drinking water, both geographical and socio-economic, is responsible for bad overall management of the resource. The solution, especially in the developing countries, is to implement large-scale public works programmes with a view to improving the supply of drinking water. To achieve this, the direct beneficiaries should not only take part in planning and implementing such policies, but should also take an active part in

planning, implementing and following up the programmes concerned. In view of the urgent need to secure water supplies for more than 1 billion people, close cooperation among all nations of the world is therefore essential. This implies the need for international cooperation in the technical, scientific and financial fields.

(d) The right to a healthy environment

40. Drinking water is undergoing increasing degradation and contamination. The main causes are the use of drinking water in large quantities by industry, which is causing increasing pollution, and by agriculture with its growing reliance on chemicals, especially pesticides, and the dumping of toxic waste. Run-off water, like groundwater, becomes contaminated and unsuitable for household use.

(e) The right to drinking water and poverty reduction

41. The rights of poor people related to water generally lie outside the scope of ordinary law and constitute an exception to the normal rules of civil obligations and commercial contracts. These rights, which have appeared very recently in a few industrialized countries, aim to guarantee - within a competitive privatized system - access for all users, even the poorest, to a minimum supply of drinking water in areas covered by a distribution network at an affordable price. These rights may take one of the following forms. In many industrialized countries, the right of access to water is looked upon in similar terms to the rights to food or to housing, that is, as an informal right or a semi-obligation for the public authorities (which depends, to a large extent, on the financial resources available and on the goodwill shown by local authorities towards a sector of the population often frowned upon). In practice, the social services intervene in most cases in an effort to avoid situations becoming too dramatic. Their action in such cases is justified on the grounds of health and public hygiene and of solidarity (the struggle against poverty). Poor people in rented accommodation receive housing aids, which in principle cover the cost of water that is included in the rent. Any failure on their part to pay the rent or charges will not affect their water supply, which must be maintained until such time as they are expelled for non-payment. On the other hand, people who have themselves signed a contract for their water supply (as is the case with house-owners and some tenants), may have their supply cut off by the water supply company for non-payment.

2. The effects of the right to drinking water and sanitation on individual rights

(a) The right to life

42. The lack of access to drinking water and sanitation endangers all animal and plant life and jeopardizes the lives of millions of individuals. UNDP, in its Human Development Report 1994, recognized that the emerging concept of human security should encompass a broad range of human security issues, including access for all to drinking water and sanitation. The right to drinking water is therefore an essential component of the right to life.

(b) The right to health

43. Since water is essential for life, it follows that there is a close link between drinking water and health. The quality of the water and food supply, as well as of sanitation and public health services, is crucial for health. Over the centuries, many epidemics have been directly linked to the quality of water. Nowadays, water-related diseases continue to be one of the major health problems of the world's population, particularly in developing countries, where it is estimated that some 80 per cent of illnesses and more than one third of deaths are caused by drinking contaminated water. However, article 25 of the Universal Declaration of Human Rights states that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family"; and the international community, in adopting the Declaration on Social Progress and Development on 11 December 1969, set the objective of ensuring everyone an adequate standard of living and of achieving "the highest standards of health and the provision of health protection for the entire population, if possible free of charge" (art. 10 (d)). Many illnesses related to drinking water result from the presence of pathogenic organisms, whether bacteria, protozoans, viruses or worms. Some of them may cause death, while others have only mild pathological consequences. However, despite the existence of vaccines and other preventive measures, many people still succumb to illnesses linked to inadequate drinking water, hygiene and public health.

(c) The right to housing

44. Access to drinking water is directly related to the issue of housing, to which many international human rights instruments refer. Paragraph 8 of General Comment 4 (1991) adopted by the Committee on Economic, Social and Cultural Rights on the right to adequate housing (article 11 (i) of the International Covenant on Economic, Social and Cultural Rights) identifies seven key aspects of this right. One of them is that "an adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services" (para. 8 (b)). The growing volume of refuse and liquid waste produced by cities is a serious threat to health and the environment. Furthermore, urban garbage causes extensive pollution of fresh water, as well as of the air and the soil Each year about 5.2 million people, 4 million of them children, die from illnesses linked to inadequate refuse collection and sewage disposal.

(d) The right to education

45. The supply of water in arid and semi-arid regions, particularly for rural populations, is a priority. With regard to household needs requiring an adequate supply of water - for drinking, cooking, laundry, washing dishes and personal hygiene - it is women, most often young women or even small girls carrying basins on their heads, who walk long distances, often several times a day, to the nearest source of water. As a result, they do not go to school. However, according to article 13 of the International Covenant on Economic, Social and Cultural Rights, "education shall be directed to the full development of the human personality and the sense of its dignity"

(para. 1); in addition, "primary education shall be compulsory and available free to all" (para. 2 (a)). According to the UNDP Human Development Report 1996, school enrolment of girls at the primary level compared with boys amounts to 50 per cent in the least developed countries, whereas in industrial countries the average is 97 per cent. The lack of a proper supply of drinking water therefore constitutes an obstacle to the "eradication of illiteracy and the assurance of the right to universal access to culture, to free compulsory education at the elementary level and to free education at all levels; the raising of the general level of life-long education", one of the objectives of the Declaration on Social Progress and Development (art. 10 (e)).

(e) Cultural rights

46. Water, which has been worshipped ever since the time of the pharaohs, particularly in Africa, nourishes the fertility of fields and living beings alike. There are many symbolic meanings attached to water in popular traditions: such as the source of life, a purifying substance, or a factor of regeneration. This is why water is a precious commodity; its source, access and flow are an integral part of the daily manifestations of countless ancestral traditions. Article 1 of the Declaration of the Principles of International Cultural Cooperation, adopted on 4 November 1966, states that: "1. Each culture has a dignity and value which must be respected and preserved. 2. Every people has the right and the duty to develop its culture. 3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind."

CONCLUSION

47. The problem of water is universal. Close cooperation among all nations of the world is therefore essential. The obligation of States to cooperate with each other was first enunciated in articles 55 and 56 of the United Nations Charter. Later, it was made explicit in many international instruments, including the Universal Declaration of Human Rights (art. 28) and the International Covenant on Economic, Social and Cultural Rights (art. 2, para. 1). The Declaration on the Right to Development, in which development is defined as a multidimensional and comprehensive process taking place at both the national and international levels, reaffirmed the principle of the duty of solidarity and the obligation that all States have "to cooperate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, independence, mutual interest and cooperation among all States, as well as to encourage the observance and realization of human rights" (art. 3). The Declaration on Social Welfare, Progress and Development calls for "the provision to the developing countries of technical, financial and material assistance and of favourable conditions to facilitate the direct exploitation of their national resources and natural wealth by those countries with a view to enabling the peoples of those countries to benefit fully from their national resources" (art. 23 (d)). It also calls for "the broadest possible international technical, scientific and cultural cooperation and reciprocal utilization of the experience of countries with different economic and social systems and different levels of development, on the basis of mutual advantage and strict observance of and respect for national sovereignty" (art. 24 (b)).

48. In conclusion, it may be noted that the Universal Declaration on the Eradication of Hunger and Malnutrition proclaims that "all developed countries and others able to do so should collaborate technically and financially with the developing countries in their efforts to expand land and water resources for agricultural production and to assure a rapid increase in the availability, at fair costs, of agricultural inputs such as fertilizers and other chemicals, high-quality seeds, credit and technology. Cooperation among developing countries, in this connection, is also important" (para. 10). The rights of poor people in particular generally lie outside ordinary law and must constitute an exception to the normal rules governing civil and commercial obligations. In a few industrialized countries very recently, such rights have emerged as guaranteeing, within a liberal system, the access for all users, even the poorest, to a minimum supply of drinking water in areas covered by a distribution network, for a reasonable price. While water is undoubtedly an economic good, it would be absolutely wrong and harmful to subject it entirely to market conditions, which are basically geared to profit. States must take all necessary measures to enable the poorest people to enjoy this right, which is vital for all human beings. The right to drinking water must be considered as a non-derogable right.